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ALWARD'S BOOKSTORE.

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A. G. TOWNSEND.

Twin Pictures.

BY A. A. A.

Gaily dawned the brightening morning,
And the youthful day was glad;
Hazy shadows came at mid-day,
And the olden day was sad;
Soon the misty vapors falling,
Trickle down the weeping sky,
Till the golden sunset's purple
Told the mid-day shadows by;
While the clouds which darkened over,
As they waned and faded away,
Seem but mountain, heaven united—
Bliss along the trail of day.

Thus has life its clouded dawns,
Till the mists of grief arise;
Thus has life its clouded noon-day,
Gaily ringed with drops, weeping skies.
But with every tear-drop falling,
Fades the darkest shades away,
Till the beaming beams of evening
Tint the clouds with golden ray;
And the misty sorrows over—
Lighted up with heavenly love—
Show the track where mortals travel
To the land of light above.

The Personal Liberty Laws.

Majority Report of the House Judiciary Committee.

In the House of Representatives of this State, on Friday last, Mr. Pringle, from the majority of the committee on the Judiciary, reported adversely on the bill to repeal certain sections of the act to protect the rights and liberties of the inhabitants of Michigan. The following is the report:—

The majority of the Committee on Judiciary, to whom was referred a bill to repeal sections two, three, and four, of an act entitled "An act to protect the rights and liberties of the inhabitants of this State," approved February 13, 1855, have had the same under consideration, and have endeavored carefully to consider all the reasons which may be offered for and against the bill. In view of the importance which this subject has assumed in the public mind, and the fact that those who have thought it worth their while to argue the legal questions involved have, for the most part, seemed to lose sight of certain considerations and legal rules which are believed to fully sustain the law as a constitutional enactment, it has been deemed proper to set forth somewhat at length, the reasons which have influenced a majority of the committee.

The sections which it is proposed to repeal contain the following provisions:—

1st. That all inhabitants of this State, arrested and claimed as fugitive slaves, shall be entitled to all the benefits of the writ of *habeas corpus* and of the trial by jury.

2d. That if the writ be sued out in vacation and the alleged fugitive be not discharged, he shall be entitled to an appeal to the Circuit Court for the county, on furnishing reasonable bail.

3d. That, on the trial of the issue before the officer or the court, either party may demand and have a trial by jury of the questions of fact.

4th. That, in case of costs being charged against the alleged fugitive, the State shall pay them.

The latter provision is one to which the claimants of fugitive slaves are not likely to object, it being to their benefit. It is, perhaps, more liberal than the circumstances of the case demand, or than is required for a faithful compliance with the clause of the constitution relating to the rendition of persons escaping from service or labor, but it is believed to be better to retain it, at least for the present, than to render the State liable, by its repeal, to the charge, however unjust, of "unfriendly legislation."

The important inquiry, as to the object and purpose of the law of 1855 (including the sections proposed to be repealed), must be answered by a consideration of the statute itself, of other enactments and judicial decisions, and also of certain rights guaranteed by the Federal constitution. It must be construed for the purpose intended in accordance with such rules of construction as are adopted in the courts of law, and by such rules the question of its validity must be determined.

The title of the act indicates in so many words a purpose "to protect the rights and liberties of the inhabitants of this State;" and the title of an act, as well as its preamble, may be used to explain its meaning or object, whenever necessary. The constitution of Michigan (sec. 20, art. 4) provides that "No law shall embrace more than one object, which shall be expressed in its title." This clause, it is submitted, renders imperative upon courts the rule to construe the act first and only for the purpose indicated in its title. This act, therefore, only relates to the protection of those dwelling permanently in this State, for such is the meaning of the word "inhabitants," used both in the title and act itself. It must also have a construction limited to the protection of the legal rights and liberties of the class of persons mentioned. Sections 6 and 7 of the act prescribing penalties for violation of the rights of free men afford also a strong implication as to the general object of the law. While the fact undoubtedly is that the law was enacted principally on account of the obligation of the State to protect free blacks and persons of color residing in it from being carried into slavery by any summary process, it may also be said to be strictly within the rule indicated by Justice Wayne in the case of *Prigg vs. Pennsylvania*, 16 Peters Reports, 650, "That legislation may be confined to that end and made effectual without making such a remedy applicable for the rendition of fugitive slaves." It may, perhaps, be

granted that, in the practical operation of the act, those who are fugitive slaves may be sometimes brought before the courts, but that is the incidental effect and not the intention of the law, if it may be construed in accordance with its title, our State constitution and the decisions of the Supreme Court of the United States applicable to the subject. The case of *Prigg vs. Pennsylvania*, decided by the Supreme Court of the United States in January 1842, has been often cited to show the unconstitutionality of these three sections of our law of 1855. Inasmuch as the volume containing it is not ordinarily accessible, it may be well to give a brief history of the case, of the question before the court, and of the decision made, with a glance at the opinions expressed, which were in no sense important to the judgment rendered.

Edward Prigg was indicted in York county, Pennsylvania, "for leaving, with force and violence, taken and carried away from that county, to the State of Maryland, a certain negro woman, named Margaret Morgan, with a design and intention of selling and disposing of and keeping her as a slave or servant for life, contrary to a statute of Pennsylvania passed on the 26th of March, 1826," and convicted on a special verdict by the Court of Oyer and Terminer. On a writ of error to the Supreme Court of Pennsylvania, the judgment was affirmed, and the case was then brought on a second writ of error to the Supreme Court of the United States. The Pennsylvania act of 1826, entitled "An act to give effect to the provisions of the constitution of the United States relative to fugitives from labor, for the protection of free people of color, and to prevent kidnapping," is set forth in the special verdict, and provides penalties for any person taking and carrying away from any part of the State, to another State, any negro or mulatto, with the intent that such negro or mulatto shall be sold as a slave or servant for life, and also a mode for the rendition of fugitive slaves somewhat similar to the Federal law of 1793, and well calculated to be effective for that purpose. The special verdict also finds that Margaret Morgan was the slave for life of Margaret Ashmore, who resided in the State of Maryland, and that the defendant Prigg was duly appointed agent and attorney of the owner of the slave, and in that capacity took the negro woman, without any process of law authorizing him so to do, from the county of York to the State of Maryland, and delivered her to her mistress. The law of Pennsylvania evidently contemplated that all persons should be subject to the penalties for kidnapping who did not at first procure an order for the return of the fugitive in accordance with the law for that purpose.

Upon this state of facts the court reversed the judgment of guilty expressly upon the ground that, "In virtue of the constitution, the owner of the slave is clothed with the authority by himself or agent, in every State of the Union, to seize and recapture his slave wherever he can do it without breach of the peace or illegal violence." It was only necessary to the decision made that the Pennsylvania statute should be declared void in so far as it provided for the punishment of those who, as owners or agents, took and carried away slaves from that Commonwealth to another, without the warrant of a proper magistrate. In so far as the Court went in deciding that the clause of the constitution relating to the rendition of persons held to service or labor gave to the masters of escaping slaves the right of recapture in all the States, and thus might "properly be said to execute itself," the decision is evidence of law, and is to be received as such in all courts and places, equally with other authoritative rulings of the highest judicial tribunals. But, in so far as the court assumed to deliver opinions unnecessary to determine the question of the guilt or innocence of Edward Prigg, the conclusions of the court are of no binding force upon that or other courts. Yet, inasmuch as the States of Maryland and Pennsylvania had specially authorized their ablest counsel to appear at the bar of the court, and inasmuch as other questions were, apparently by consent, argued before the Judges, it is conceded that the opinions placed on record have been more than usually weighty, and are entitled to be respectfully considered. The *obiter dicta* of this case are no more to be regarded than those of many others, aptly characterized, in some instances, as "the idle gabble of a judge."

Incidentally a majority of the Judges declared that the power to legislate for the rendition of fugitive slaves belongs exclusively to Congress, and hence that all State laws enacted for that purpose were absolutely void and of no effect. From this opinion three of the Judges dissented, and the very able opinions of Chief Justice Taney and Justice Thompson are sufficient to raise some doubt as to the ultimate decision of the question. It was also declared by a majority of the Judges in substance, that the fugitive slave law of 1793 was only constitutional in so far as it authorized proceedings before a Circuit or District Judge of the United States, and that the magistrates of counties, cities and townships had no authority to carry it into effect, although required to do so by the terms of the old statute. In accordance with these opinions, the non-slaveholding States generally repealed their laws for the rendition of fugitive slaves, and such as had not previously done so withdrew, by repealing their laws the consent which had been supposed previously to give valid-

ity to the delegation of power to local magistrates by the act of 1793. The event proving somewhat disastrous to the "peculiar institution," and led to the enactment of the supplementary fugitive slave law of 1850, by which it was attempted to give to Commissioners the power previously and still possessed by the Federal Judges, and to deny the writ of *habeas corpus* in certain cases where a fugitive had been arrested.

Although a majority of the court pretty emphatically say that the fugitive slave clause of the constitution "manifestly contemplates the existence of a positive unqualified right on the part of the owner of the slave which no State law or regulation can in any way qualify, regulate, control or restrain," it is to be remarked that the general police power of the State is conceded, and that they "possess full jurisdiction to arrest and restrain runaway slaves and remove them from their borders, and otherwise secure themselves against their depredations and evil examples," and that the States may punish them for crime like other subjects; and, although it appears evident that such measures might sometimes facilitate and somewhat delay or wholly prevent the return of a fugitive, the court says, "The rights of the owners of fugitive slaves are in no just sense interfered with or regulated by such a course." The court distinctly enough declares that any law designed to regulate or interfere with the rendition of fugitive slaves would be unconstitutional, but would allow the exercise of proper State authority to protect its inhabitants, although the incidental but undesigned effects might be to hinder or delay the owner of this kind of property. It is also to be remarked that in none of the lengthy opinions is there any intimation that the writ of *habeas corpus* shall be denied to the fugitive, or that Congress has any power to deny it to him.

The constitution of the United States (sec. 9, art. 1) recognizes a subsisting right, in these words:—

"The privilege of the writ of *habeas corpus* shall not be suspended, unless when in case of rebellion or invasion the public safety may require it."

The language can hardly be misunderstood, and certainly will not allow the free men of Michigan to be denied this privilege, held in so great estimation from the day when *Magna Charta* was wrested from King John. It is believed by a majority of the committee that the fugitive slave law of 1850 is unconstitutional and void, in so far as it attempts to deny the writ of *habeas corpus*.

Another clause of the Federal constitution (sec. 1, art. 3), seems to be equally capable of misconception:—

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."

The majority of the committee believe that, however inhuman and sum-
marily the proceedings may be made; however much contrary rules of evidence may be overturned in the mode of trial; still that the act by which the United States Commissioner determine that the fugitive slave law be given up to a claimant is and must be in its character judicial, and hence, to be lawful, must be exercised either by the Supreme Court or by inferior courts, established by Congress. Any such courts are to be presided over by Judges holding office during good behavior, and receiving salaries not to be diminished during their continuance in office. The adjudication of the Commissioner is pretty certainly not the judgment of the Circuit or District Court, for these are courts of record, having their own Judges; nor can the act of 1850 be held to constitute new courts to be held by the Commissioners or to make them judges, for neither in their modes of appointment, in the tenures of their offices, or in the compensation they receive, do they correspond to the constitutional requirements of judges of inferior courts. If the majority of the committee are right in the conclusion to which they have arrived, the attempted delegation of power by Congress to Commissioners is utterly void, and the District Judge is the only officer, resident in this State, authorized to issue valid process for the seizure, or adjunction the return, of a fugitive slave. Practically, the slave-owner is thus left almost entirely to depend upon his right to seize and recapture, affirmed by the court in the case of *Prigg vs. Pennsylvania*. The temptation is much greater than if regular tribunals were established at all the principal towns to seize either directly or through the illegal instrumentality of Commissioners and carry into slavery those who are really free.

The act of 1855 was passed a few months after the repeal of the Missouri compromise by a majority then in control of political power; it was evidently drafted by some one accustomed to the work which he undertook, but at the same time it bears evidence, in the opinion of the undersigned, of a desire to keep strictly within the requirements of the Federal constitution, as expounded by the Federal courts.

It does not provide, as it might lawfully have done, a long and difficult mode of trial to protect the liberties of its inhabitants, but, on the contrary, adopts the simplest and most summary

process known to the common law to have their rights adjudicated. It does not strip this writ of the difficulties attending its procurement in ordinary cases, but leaves statutes operative in all other cases of illegal detention of individuals to operate in this. A large part of chapter 134 of the Revised Statutes of 1846 (Comp. Laws, pp. 1, 371 to 1,389) relates to the writ of *habeas corpus*. It is to be granted on petition, and that the petition must state in substance:—

1. That the person for whom the writ is sought is illegally imprisoned or restrained by some other person.

2. That such person is not detained by virtue of any process, judgment, decree, or execution of the courts of the United States or of this State.

3. The cause of the confinement or restraint according to the best knowledge or belief of the petitioner.

4. If the confinement be by virtue of any warrant, order, or process, a copy thereof must be annexed, unless a copy was refused, or a demand could not be made.

5. If the imprisonment be alleged to be illegal, it must be shown in what the illegality consists.

6. It must specify the right demanded.

7. It must be verified by the oath of the petitioner.

These various requirements can ordinarily be easily complied with in behalf of a person entitled to freedom, but not so readily in behalf of one who is legally detained in the custody of another. A petitioner whose main allegation is false is not permitted merely to swear to a legal conclusion, but must run such a gauntlet of specifications as is likely to involve him to perjury. Under this writ, the judge cannot inquire into the justice or illegality of any process issued by any court of the United States or any judge thereof, or as to the justice or legality of any legal process, civil or criminal, upon which any person is convicted or in execution. Yet it was competent for the Legislature, in its discretion, to have lessened the requirements preliminary to the issue of this writ, and the power to grant it and to make adjudications upon its return might have been conferred upon every Justice of the Peace in the State, instead of remaining limited to a few Judges and Circuit Court Commissioners. The practical result has been that, while for nearly six years no claimant of fugitive slaves has been at all delayed or hindered by this act, or on the other hand no free person has been kidnapped as a slave within the State of Michigan, although this is not a very frequent occurrence in some of the States which have no such statutes. Does it not, as we examine it, become abundantly evident that this statute was passed for the purpose indicated by its title, and not for the purpose of regulating the rendition of fugitive slaves? Can it, "in any just sense," be properly said to interfere with, hinder, or delay the right of the slaveholder?

It is provided in section 3, that either party may demand and have a trial by jury of the question of fact arising in the case, but this circumstance does not change the summary character of the proceeding. If the person to whom the writ is addressed can show that he holds his prisoner upon any valid process or order, no question of the fact will arise in the case, but the person detained will be remanded upon determination of the question of law. If questions of fact are contained in the issue formed by the petition, the return to the writ, and the details under oath which may be made by way of reply, either party may demand a jury, and, inasmuch as the proceeding is a summary one, the jury provided for will have to be summoned from among the by-standers or citizens who are legal jurors, and on the trial none but questions of fact are left to their determination. It is to be noted that while in all trials, and in all civil cases determined before Justices of the Peace, the jury may judge of and decide all questions of law, as well as of fact